

MEMORANDUM ENDORSEMENT

McCray v. Westchester County et al

18-cv-3494 (NSR)

USDC SDNY
DOCUMENT
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DOC #: _____
DATE FILED: 2/4/2021

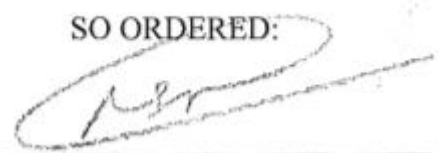
The Court reviewed Plaintiff's request for extension of time, dated January 15, 2021 (ECF No. 59), to oppose Defendants' motion to dismiss. (ECF No. 61) and Defendants' request for the Court to deem their motion unopposed.

The Court grants Plaintiff a 60-day extension. No further extensions. Plaintiff shall serve opposition papers on or before March 22, 2021. Defendants shall serve reply papers on or before April 6, 2021. The pending motion to dismiss is denied, without prejudice, subject to re-filing on the new reply date, April 6, 2021.

The Clerk of the Court is directed to terminate the motion at ECF No. 61.

Dated: February 4, 2021
White Plains, NY

SO ORDERED:



NELSON S. ROMÁN
United States District Judge

RECEIVED
SDNY PRO SE OFFICE

2021 JAN 29 AM 10:49

To: The Honorable Nelson S. Román, U.S.D.J

From: John McCray #18A1097

Date: January 15, 2021

Subj: McCray v. Westchester County et al
18-cv-3494 (NSR)

Dear Sir,

Enclosed with this letter you will find a copy of a grievance and F.O.I. L request. Both documents are self-explanatory. As of today's date the facility has pretended as if it hasn't received my grievance on multiple fronts and has denied my F.O.I. L request. I'm in the process of filing an Article 78 Complaint with the Supreme Court and appealing my F.O.I. L request to Albany. The constitutional, institutional and criminal violations being committed by correction officers and almost every other employee of the NYSDOCS throughout these facilities AND Albany are very alarming. With that being said I respectfully request a 90-day extension, Original Complaint, Amended Complaint, Decision & Order and the Initial Review. Please. And thank you in advance for your time, patience and consideration.

Respectfully,
John McCray

FORM 2131E (9/12)

Inmate Grievance Complaint

Grievance No.

Clinton Correctional Facility

Dec. 07, 2020

John McCray 18A1097 UH-7-33

Program: Maintenance 4

Description of Problem:

On Dec. 07, 2020, sometime during the morning, an inmate on UH-8 company attempted to get some legal work of mine to me throw the back entryway of UH-7 and 8 companies. The legal mail got stuck in the middle of the entryway. The legal work consisted of federal documents labelled as Docket # 7:18-cv-03494-NSR and an Article 78 Appeal-Brief to the 3rd Department, which is an appeal granted to me of the Clinton County Supreme Court, labelled as Clinton County Index No. 19-1650, RSI No. 09-1-2019-0502.24. Both of these cases have deadlines

for me to file by January, 2021. When I discovered what the inmate did with my legal mail I stopped CO N. Poitras who was doing a round down 7 company. This occurred at either 11:00 am or 12:00 pm, give or take. I expressed my dilemma to CO Poitras and emphasized that it was important legal mail of mine and I'll gladly accept a ticket for unauthorized exchange. CO Poitras then proceeded to ask me would I be willing to drop my sexual claim against his fellow CO-workers who I recently filed an Article 73 Complaint against. I declined. He then stormed off, retrieved my legal work, walked through 8 company, walked to the side of the beginning of 7 company and proceeded to throw my legal work away in the garbage. I witnessed him, the surveillance witnessed him, and the entire 8 company witnessed him walk by with my legal work. After asking one of the porters to inquire about my legal mail, to no avail, I again stop CO Poitras during a round down 7 company. CO Poitras outright lies about having picked up my legal mail. About 20 minutes later I request to see mental health and CO N. Poitras accompanied with another officer approaches my cell. Again I ask about my legal mail and only then does CO N. Poitras admit to discarding it because he wasn't aware of what it was. But keep in mind that multiple officers walked by this legal work

without a second glance, that I informed CO N. Poitras of exactly what it was, that CO Poitras initially lied about picking it up and then tried to black-mail me to drop my sexual abuse claim against his co-workers in order to receive my legal mail back that he was obligated to issue back to me with any misbehavior report. He realized I didn't care about the potential ticket and opted to throw away my legal work that he knew for a fact was legal work. Sometime before 2pm I was escorted to mental health services and reported my grievances, which consisted of depression, anxiety and extreme fatigue. I was frowned upon and sent back to my cell ten minutes later. Upon entering UH I noticed my legal mail sitting in the garbage outside of the block and when I asked the officers can I retrieve it they nastily said no.

Action Request By Inmate:

law
to
co
to
w

Rachel
Subst
A

+ that investigations are minimal ones, as to action is allowing these acts of mis- of exposing it cov- ations launched as used in this facility from A since June.

5A1097 UH-7-33

From: John McCray 18A1097 UH-7-33

To: F.O.I.L Officer

Date: December 07, 2020

Subj.: F.O.I.L Request

Dear Sir or Madam,

On December 07, 2020, at 11:00am or 12:00 (give or take) CO N. Poitras stopped in front of my cell to speak with me in UH-7-33. Exactly a hour later while doing another round CO Poitras again stops in front of my cell to speak with me. During the first time [REDACTED] CO N. Poitras stops to speak with me, which, again, was at 11:00 am or 12:00 pm (give or take), he goes through the back entryway to get from 7 company to 8 company. While in the entryway of 7 and 8 companies CO Poitras picks up an Manila envelope containing legal mail, walks up 8 company, walks to the very beginning of 7 company and proceeds to throw the legal mail in the garbage. Again, between 12:00 pm and 1:00 pm CO N. Poitras, accompanied with another CO, come to my cell to speak. Some time between 1:00 pm and 2:00 pm I'm escorted to see mental health. I request all surveillance, photos, audio of subject matters above and the mental health referral [REDACTED] and written report by mental health personnel.

DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION

CLINTON CORRECTIONAL FACILITY

P.O. BOX 2001

DANNEMORA NEW YORK 12929

CLINTON

NEOPOST

FIRST-CLASS MAIL

01/25/2021

US POSTAGE

\$000.51

NAME:

John McCray

DIN:

18A1097

Clerk

United States District Court

Southern District of New York

The Daniel Patrick Moynihan U.S. Courthouse

U.S. Courthouse - 500 Pearl St.
New York, NY 10007

LEGAL MAIL

RECEIVED
SDNY PRO SE OFFICE

JAN 22 2021 10:43

CLERK'S OFFICE
SDNY

BENNETT BRICKLIN & SALTZBURG, LLC

By: Joseph DeDonato Esq.

Bar No. 2333037

Attorneys for Defendants

Aramark Correctional Services, LLC.,

Manuel Mendoza, Charles Butler, Coffey Kohli,

Penny Stewart, W.C.D.O.C. Craig Boissy,

Westchester County and Kevin Cheverko

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Livingston, NJ 07039

(973) 888-2181 *phone*

(973) 486-5157 *fax*

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

JOHNNY MCCRAY

Plaintiff,

v.

WESTCHESTER COUNTY, W.C.D.O.C.,
COMMISSIONER KEVIN CHEVERKO,
ARAMARK CORRECTIONAL SERVICES, LLC.,
ARAMARK FOOD SERVICE, DIRECTOR
MANUEL MENDOZA, ARAMARK KITCHEN
CIVILIAN CHARLES, ARAMARK KITHCEN
CIVILIAN COLEY; ARAMARK KITCHEN
CIVILIAN PENNY; ARAMARK KITCHEN
CIVILIAN CRAIG

Defendants.

: DOCKET # 7:18-cv-03494-NSR
:
: The Honorable Nelson Stephen
: Román
:
: Notice of Motion to Dismiss
: Pursuant to F.R.C.P. 12(b)(6)
:
: September 4, 2020
:
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PLEASE TAKE NOTICE, that upon the Memorandum of Law, and upon all pleadings hereto filed in this action, Defendants, Aramark Correctional Services, LLC, Manuel Mendoza, Charles Butler, Coffey Kohli, Penny Stewart, W.C.D.O.C. Craig Boissy, Westchester County, and Kevin Cheverko, by their attorney, Bennett, Bricklin & Saltzburg, LLC., will move this Court before the Honorable Nelson Stephen Román at the United States Courthouse, 300 Quarropas

Street, Chambers 630 in White Plains, New York on a date and at a time designated by the Court, for an order granting the Moving Defendants' Motion to Dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure on the ground that the Complaint fails to state a cause of action against Moving Defendants, and for such other and further relief as this Court deems just and proper.

Dated: New York, New York
September 4, 2020

BENNETT BRICKLIN & SALTZBURG LLC

By: Joseph DeDonato
Joseph DeDonato Esq.
Bar No. 2333037
Attorney for Defendants,
Aramark Correctional Services, LLC.,
Manuel Mendoza, Charles Butler, Coffey
Kohli, Penny Stewart, W.C.D.O.C. Craig
Boissy, Westchester County and Kevin
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Via Regular Mail
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18-A-1097
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